city of CINCINNATI
LAW

October 4, 2013

Via email and regular mail
CPF@fssp-law.com

Christopher P. Finney
Finney, Stagnaro, Saba, & Patterson Co., LPA
2623 Erie Avenue
Cincinnati, Ohio 45208

Re: Response to request for civil action under R.C. 733.56 concerning reimbursement for travel

Dear Mr. Finney:

In your letter of August 28, 2013, you requested that this office seek an injunction under R.C. 733.56 to restrain the alleged misapplication of corporate funds, as well as to recover funds you claim were illegally expended in connection to travel reimbursements for Councilmember Chris Seelbach and his staff. I must deny your request. The determination by Councilmembers Yvette Simpson, Christopher Smitherman, Pamula Thomas, and Wendell Young that this expense was for a public purpose is not manifestly arbitrary or unreasonable. The trip to attend an official White House event provided a forum for Councilmember Seelbach to share and celebrate the legislative successes of the City and learn about how other cities are addressing equality issues, in addition to being recognized for his legislative accomplishments as a Councilmember. The trip benefitted the City by showcasing Cincinnati's dedication to equality to a national audience and by giving Councilmember Seelbach and his staff the chance to learn from other public officials from around the country.

Background

The information in your letter suggests that you may not be apprised of all of the facts related to your request. Some accurate background on the matter is beneficial.

On May 9, 2013, the White House informed Councilmember Seelbach that he had been named a Harvey Milk Champion of Change for his work as an elected official who has demonstrated a strong commitment to equality and public service. He was nominated for this award by the Gay, Lesbian and Straight Education Network (GLSEN) for work he has done on City Council. Only state and local elected and appointed officials were eligible for the award. The official White House event,

which included an opportunity for all of the Champions of Change to describe their work and the challenges they face, was scheduled for May 22, 2013.

The White House requested that the attendees not share that they had been named a Champion of Change until the White House released the information itself. The White House did not make the public announcement until May 20. Councilmember Seelbach and the two staff members who accompanied him left on May 21 for the May 22 event.

Contrary to your assertions, neither Councilmember Seelbach nor his staffers "upgraded" their rooms. Given the short notice and need to be close to the White House, the "Junior Double Suite" rooms were the only rooms available at that time. And according to the hotel, the "Junior Double Suite" is simply the name the hotel uses to describe a typical hotel room that features two full size beds. It does not contain a pull-out sofa or extra seating room that one might find in a room described as a suite.

Moreover, in an effort to save money, the two staff members split a room. There was no additional fee associated with the number of occupants in the rooms. If Councilmember Seelbach and his two staffers had each stayed in separate Standard King rooms, which have one bed (and which were all booked), the cost would have been approximately $777. Instead, the reimbursement cost for lodging was $563. The trip cost $214 less because of the shared room.

Additionally, Councilmember Seelbach and his staff members did not request reimbursement for all of their eligible expenses, which also results in a savings to the taxpayers. They did not request reimbursement for parking, meals, or taxi fares. They also flew from Louisville in order to take advantage of cheaper airfare and did not request reimbursement for the miles traveled between Cincinnati and Louisville.

Legality of the reimbursement

Regardless of those details, however, your letter does not raise a matter requiring me to seek an injunction under Ohio law. Your letter seems to raise two complaints about the legality of the reimbursements made. First, you argue that the trip was not related to city business or for a public purpose. Second, you argue that because the pre-authorization form was not completed before the trip that the expenditure is necessarily illegal. Neither of these contentions is supported by Ohio law.

Public Purpose

The determination of whether this expenditure was for City business or a public purpose is made by City Council. Ohio courts recognize this fact:

> The determination of what constitutes a public municipal purpose is primarily a function of the legislative body of the municipality, subject to review by the courts, and such determination by the legislative body will not be overruled by the courts except in instances where that determination is manifestly arbitrary or unreasonable.

State ex rel. Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951), paragraph two of the syllabus.

This reimbursement was approved by Councilmembers Simpson, Smitherman, Thomas, Young, and Seelbach as evidenced by their signatures on two forms, "Request for Reimbursement" and "Pre-approval for Travel." Attached to the forms was a brief description of the event with a summary of the charges, receipts for the expenditures, and the email sent from the White House informing Councilmember Seelbach of the recognition. Given the fact that the attachments (1) describe the event, (2) include receipts for the expenditures, and (3) were given to the councilmembers for their review, your allegation that "the request by which payment was ultimately made may have been undertaken based upon false pretenses" is unsubstantiated. The reimbursement comes from funds previously appropriated for the expenses of Councilmember Seelbach's office.

As the councilmembers were accurately informed of the event's description and cost, their determination that travel by one of their colleagues to an official White House event is a public municipal purpose is not "manifestly arbitrary or unreasonable."

The City of Cincinnati is dedicated to equality for all. Demonstrating this fact to the public—especially on a national scale—not only improves the reputation of the City, but it also helps the City attract tourists, business, residents, and employers. Studies show that the creative class of workers, one-third of the American workforce, places a premium on living and working in areas that are diverse and tolerant. These workers use diversity and tolerance as proxies to judge whether a location is also welcoming and stimulating.[1] Therefore, highlighting Cincinnati's dedication to equality helps raise revenues for the City with negligible additional spending and no additional taxes. It is also important because from 1993 to 2004 the City Charter contained Article XII, a provision that prohibited the City from giving legal protections based on sexual orientation and that damaged the City's reputation.[2]

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[1] *See* Cathryn Oakley, *2012 Municipal Equality Index*, HUMAN RIGHTS CAMPAIGN, 6-7 (2012), http://www.hrc.org/files/assets/resources/MEI-2012_rev.pdf.
[2] *See* Gregory Korte, *Luken: Let's end intolerance*, THE CINCINNATI ENQUIRER, (Feb. 3, 2004), available at http://www.enquirer.com/editions/2004/02/03/loc_loc1a.html.

The official federal government event in Washington, D.C. was not simply an awards ceremony. Councilmember Seelbach, along with the other recipients, participated in a two-hour White House roundtable in which he discussed ways that local elected officials and community leaders can make change on LGBT rights through legislation and community action. His staff members were able to meet and discuss various policies and procedures with White House staff and other local government leaders. All recipients and their staff were able to discuss with each other which strategies work, how communities have worked together on related issues, and which legislation is moving forward in various municipalities. All of this supports the fact that the trip was related to city business and for a public purpose.

You also imply that because Councilmember Seelbach derived a private benefit from the award that it was an illegal expenditure. This is not the case. "[I]f the primary objective is to further a public purpose, it is immaterial that, incidentally, private ends may be advanced." 1982 Ohio Atty. Gen. Ops. No. 82-006, at 9, citing *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 324 (1951). For the reasons discussed above, the councilmembers decided that the primary objective was to further a public purpose.

In conclusion, this expenditure was approved by Members of Council, and that determination is not manifestly arbitrary or unreasonable. Travel to an official White House event to discuss legislative strategies is a valid public purpose.

Cincinnati Municipal Code 101-31

You are correct in noting that this expenditure was not approved prior to the trip. This is understandable given the fact that Councilmember Seelbach and his staff were instructed by the White House to not reveal the award until May 20, one day before they were supposed to depart for Washington, D.C. However, you are incorrect in asserting that this fact makes the reimbursement an illegal expenditure. Councilmembers could have declined to approve the reimbursement; however, they did not.

Additionally, your client does not have standing to bring this claim. As you are aware, the Ohio Supreme Court has stated, "There are serious objections against allowing mere interlopers to meddle with the affairs of the state, and it is not usually allowed unless under circumstances when the public injury by its refusal will be serious. Accordingly, only when the issues sought to be litigated are of great importance and interest to the public [may they] be resolved in a form of action that involves no rights or obligations peculiar to named parties." *State ex rel. Teamsters Local Union No. 436 v. Bd. of Cty Comm'rs*, 132 Ohio St.3d 47, 2012-Ohio-1861, 969 N.E.2d 224, ¶ 12 (internal citations omitted). The Court further instructs that

"taxpayers cannot contest official acts merely upon the ground that they are unauthorized and invalid." *Id.* at ¶ 16. This is because "allowing constant judicial intervention into government affairs for matters that do not involve a clear public right" does "not benefit the public." *Id.* at ¶ 17.

Reimbursement of an elected official and two employees for travel that benefits the City does not create any serious public injury. At most, your letter complains that the approval and acceptance of the reimbursement is invalid because it occurred after the travel date. That complaint alone is insufficient to have standing to bring this claim under Ohio law. Therefore, I decline to bring forward any action pursuant to R.C. 733.56 because doing so would be frivolous. Finally, bringing such a lawsuit does not make financial sense for the City as court costs would quickly exceed the amount of money that was reimbursed.

Conclusion

For the reasons discussed above, I decline to make an application in the name of the City of Cincinnati for an injunction because there was no misapplication of corporate funds.

Sincerely,

John P. Curp/JMN

John P. Curp
City Solicitor

cc: Terrance Nestor, Chief Counsel – Litigation
Councilmember Chris Seelbach